

A fee of Ten Dollars (\$10.00) is enclosed. Please return the original and any extra copy not needed by the Commission to Mr. Shane Taylor, Assistant Vice President, Leasing Division, Mercantile Bank National Association, 721 Locust Street, St. Louis, Missouri 63101.

Mr. James Bayne, Secretary
January 18, 1988
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A short summary of this document to appear in the index as follows: Partial Assignment of Rights Under Lease between Mercantile Bank National Association, 721 Locust Street, St. Louis, Missouri 63101, as Assignor; and Railmark, Incorporated, 4300 Duhme Road, Suite A, Madera Beach, Florida 33708, as Assignee; dated as of December 29, 1987, covering one hundred twenty-five (125) one hundred-ton open top hopper cars, and connected to the Lease of Railroad Equipment with Recordation Number 6751.

Very truly yours,

THOMPSON & MITCHELL

By Robert W. Agler
Robert W. Agler

EXHIBIT A
SCHEDULE A
TO BILL OF SALE

125 UNITS WITHIN BN - SLSF SERIES

100 TON OPEN TOP HOPPER CAR

| | | | | |
|------------|------------|------------|------------|------------|
| BN 540315 | BN 540333 | BN 540337 | BN 540398 | BN 540409 |
| BN 540413 | BN 540429 | BN 540439 | BN 540446 | BN 540452 |
| SLSF 87400 | SLSF 87407 | SLSF 87402 | SLSF 87404 | SLSF 87410 |
| SLSF 87412 | SLSF 87416 | SLSF 87418 | SLSF 87419 | SLSF 87421 |
| SLSF 87422 | SLSF 87424 | SLSF 87429 | SLSF 87434 | SLSF 87436 |
| SLSF 87439 | SLSF 87440 | SLSF 87442 | SLSF 87443 | SLSF 87445 |
| SLSF 87448 | SLSF 87450 | SLSF 87451 | SLSF 87452 | SLSF 87455 |
| SLSF 87456 | SLSF 87457 | SLSF 87458 | SLSF 87460 | SLSF 87461 |
| SLSF 87462 | SLSF 87463 | SLSF 87464 | SLSF 87465 | SLSF 87467 |
| SLSF 87468 | SLSF 87470 | SLSF 87471 | SLSF 87472 | SLSF 87473 |
| SLSF 87474 | SLSF 87476 | SLSF 87477 | SLSF 87479 | SLSF 87480 |
| SLSF 87481 | SLSF 87482 | SLSF 87483 | SLSF 87484 | SLSF 87485 |
| SLSF 87486 | SLSF 87487 | SLSF 87489 | SLSF 87490 | SLSF 87494 |
| SLSF 87495 | SLSF 87499 | SLSF 87502 | SLSF 87504 | SLSF 87505 |
| SLSF 87506 | SLSF 87507 | SLSF 87508 | SLSF 87510 | SLSF 87511 |
| SLSF 87512 | SLSF 87515 | SLSF 87517 | SLSF 87518 | SLSF 87520 |
| SLSF 87522 | SLSF 87523 | SLSF 87524 | SLSF 87525 | SLSF 87526 |
| SLSF 87532 | SLSF 87533 | SLSF 87536 | SLSF 87538 | SLSF 87542 |
| SLSF 87543 | SLSF 87545 | SLSF 87547 | SLSF 87548 | SLSF 87549 |
| SLSF 87550 | SLSF 87552 | SLSF 87553 | SLSF 87554 | SLSF 87555 |
| SLSF 87556 | SLSF 87557 | SLSF 87558 | SLSF 87560 | SLSF 87561 |
| SLSF 87563 | SLSF 87565 | SLSF 87567 | SLSF 87568 | SLSF 87569 |
| SLSF 87572 | SLSF 87574 | SLSF 87582 | SLSF 87583 | SLSF 87584 |
| SLSF 87585 | SLSF 87586 | SLSF 87587 | SLSF 87588 | SLSF 87590 |
| SLSF 87591 | SLSF 87593 | SLSF 87596 | SLSF 87598 | SLSF 87599 |

PARTIAL ASSIGNMENT OF RIGHTS UNDER LEASE
JAN 20 1988 -3 25 PM

INTERSTATE COMMERCE COMMISSION

THIS PARTIAL ASSIGNMENT OF RIGHTS UNDER LEASE ("Partial Assignment") is made as of the 29th day of December, 1987, by and between MERCANTILE BANK NATIONAL ASSOCIATION, a national banking association (formerly Mercantile Trust Company National Association) (hereinafter "Assignor") and RAILMARK, INC., a Florida corporation (hereinafter "Assignee").

WHEREAS, Assignor is the Lessor under a certain Lease of Railroad Equipment (the "Lease") dated as of the 1st day of September, 1972, with St. Louis-San Francisco Railway Company, a Missouri corporation (the "Lessee"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, the equipment now subject to the Lease is 125 one hundred-ton open top hopper cars (the "Cars"); and

WHEREAS, Assignee has agreed to purchase the Cars from Assignor and has agreed to assign to Assignee certain rights with respect to the Cars provided to Assignor pursuant to the Lease; and

WHEREAS, Section 12 of the Lease provides that the Lease may be assigned in whole or in part, by Lessor;

NOW THEREFORE, in consideration of the sum of \$10.00, and for other good and valuable consideration, receipt of which is hereby acknowledged, Assignor hereby assigns, transfers, sets over and conveys all its rights pursuant to Section 14 of the Lease "Return of Units upon Expiration of Term."

This Partial Agreement is limited to Section 14 of the Lease and all rights of Assignor under the Lease not specifically assigned to Assignee hereby are retained by Assignor.

Assignor agrees to deliver written notice of this Partial Assignment to Lessee as provided in Section 12 of the Lease, promptly after receipt of a copy of this Partial Assignment executed on behalf of Assignee.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first hereinabove set forth.

MERCANTILE BANK NATIONAL
ASSOCIATION

By Shana Taylor
Title Asst. V.P.

The undersigned hereby
accepts the foregoing Assign-
ment this 29 day of
DECEMBER, 1987.

RAILMARK, INC.

By [Signature]
Title PRESIDENT

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this 13th day of January, 1988, before me appeared Shane Taylor, to me personally known, who, being by me duly sworn, did say that he is an Assistant Vice President of MERCANTILE BANK NATIONAL ASSOCIATION, a national banking association, and that said instrument was signed in behalf of said association, by authority of its Board of Directors; and said Shane Taylor acknowledged said instrument to be the free act and deed of said association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

[SEAL]


Notary Public

My Commission Expires:

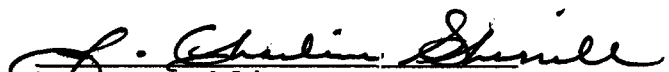
J. CHARLINE SHERRILL
~~NOTARY PUBLIC, STATE OF MISSOURI~~
MY COMMISSION EXPIRES 11/1/89
CITY OF ST. LOUIS

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this 13th day of January, 1988, before me personally appeared James E. Lando, to me personally known, who, being by me duly sworn, did say that he is the President of RAILMARK, INC., a Florida corporation, and that said instrument was signed on behalf of said corporation, by authority of its Board of Directors; and said James E. Lando acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

[SEAL]


Notary Public

My Commission Expires:

J. CHARLINE SHERRILL
~~NOTARY PUBLIC, STATE OF MISSOURI~~
MY COMMISSION EXPIRES 5/24/89
CITY OF ST. LOUIS

**ANNEX D
to
Conditional Sale Agreement**

LEASE OF RAILROAD EQUIPMENT

Dated as of September 1, 1972

between

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

and

MERCANTILE TRUST COMPANY N.A.

Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on September 1, 1972, at .M., Recordation No. .

LEASE OF RAILROAD EQUIPMENT dated as of September 1, 1972, between ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a Missouri corporation (hereinafter called Lessee), and MERCANTILE TRUST COMPANY N.A., a national banking association (hereinafter called the Lessor).

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of the date hereof (the "Security Documents"), with GREENVILLE STEEL CAR Co. (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder has assigned or will assign its interests in the Security Documents to UNITED STATES TRUST COMPANY OF NEW YORK, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Documents on or prior to December 31, 1972 (hereinafter called the Cut-Off Date), at the rentals and for the terms and upon the conditions hereinafter provided;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Documents, subject to all the rights and remedies of the Vendor under the Security Documents:

§ 1. *Incorporation of Model Provisions.* Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Lease Provisions" annexed to the Security Documents as Part II of Annex C thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease.

§ 2. Delivery and Acceptance of Units. § 2 of the Model Lease Provisions is herein incorporated as § 2 hereof.

§ 3. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 61 consecutive quarter-annual payments, payable on January 15, April 15, July 15 and October 15 in each year commencing with January 15, 1973 (or if any such date is not a business day, on the next preceding business day). The first such payment shall be in an amount equal to 0.021806% of the Purchase Price (as defined in the Security Document pursuant to which such Unit is being acquired by Lessor) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under such Security Document to January 15, 1973; and the next 60 quarter-annual payments shall each be in an amount equal to 2.14939% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in immediately available New York or Federal funds (including but not limited to the payments required under § 7 hereof) for the account of the Lessor, c/o United States Trust Company of New York, 45 Wall Street, New York, N. Y. 10015 on or before 11 o'clock a. m. New York time on the date upon which payments are due and payable. Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Documents due and payable on, or within three months and six days after, the date such payments are due hereunder and, so long as no event of default under the Security Documents shall have occurred and be continuing, any balance shall be paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documents, including the Lessee's rights by subrogation under Article 8 thereof, or the Builders or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or

any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final quarter-annual payment of rent in respect thereof is due pursuant to § 3.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Documents in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Documents. If an event of default should occur under the Security Documents, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Documents.

§ 5. *Indentification Marks.* § 5 of the Model Lease Provisions is herein incorporated as § 5 hereof.

§ 6. *Taxes.* § 6 of the Model Lease Provisions is herein incorporated as § 6 hereof.

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occur-

rences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the January 15 or July 15 next succeeding such notice, the Lessee shall pay to the Lessor the rental payment due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and Lessor shall, upon request of Lessee, deliver to or upon the order of Lessee a bill of sale (without warranty) for such Unit.

The Casualty Value of each Unit as of any January 15 or July 15 shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

| <u>Date</u> | <u>Percentage</u> | <u>Date</u> | <u>Percentage</u> |
|---------------|-------------------|-----------------------------|-------------------|
| 1/15/73 ----- | 105.3972% | 7/15/80 ----- | 65.1368% |
| 7/15/73 ----- | 104.8766 | 1/15/81 ----- | 62.3257 |
| 1/15/74 ----- | 103.8995 | 7/15/81 ----- | 59.5470 |
| 7/15/74 ----- | 103.0234 | 1/15/82 ----- | 56.5496 |
| 1/15/75 ----- | 101.6827 | 7/15/82 ----- | 53.5759 |
| 7/15/75 ----- | 100.4487 | 1/15/83 ----- | 50.4069 |
| 1/15/76 ----- | 94.1191 | 7/15/83 ----- | 47.2527 |
| 7/15/76 ----- | 92.5455 | 1/15/84 ----- | 43.9271 |
| 1/15/77 ----- | 90.5698 | 7/15/84 ----- | 40.6074 |
| 7/15/77 ----- | 88.6891 | 1/15/85 ----- | 37.1407 |
| 1/15/78 ----- | 81.8450 | 7/15/85 ----- | 33.6710 |
| 7/15/78 ----- | 79.7267 | 1/15/86 ----- | 30.0675 |
| 1/15/79 ----- | 77.3267 | 7/15/86 ----- | 26.4522 |
| 7/15/79 ----- | 74.9798 | 1/15/87 ----- | 22.7055 |
| 1/15/80 ----- | 67.7064 | 7/15/87 ----- | 18.9378 |
| | | 1/15/88 and thereafter - | 15.0000 |

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in the Security Documents. Any net insurance proceeds as the result of insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7. If the Lessor shall receive any such net insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this § 7 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

§ 8. *Annual Reports.* § 8 of the Model Lease Provisions is herein incorporated as § 8 hereof.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* § 9 of the Model Lease Provisions is herein incorporated as § 9 hereof, except that

(a) the following is added at the end of the third paragraph thereof:

“, ordinary wear and tear excepted”; and

(b) the following is added at the end of the fourth paragraph thereof:

“; provided, however, that Lessee shall have and retain title to and control of (including the right of removal) such devices and appurtenances of an optional character as Lessee may elect to add to any Unit but which are not required by the Interstate Commerce Commission, the Department of Transportation, or any other applicable regulatory body for the

operation, use or interchange of such Unit, and which are not included in the Purchase Price of such Unit, upon condition that the Lessee shall at its own expense upon such removal restore such Unit to its condition as existing prior to such removal, including any such repairs necessary to make such Unit qualify under the rules or regulations of any such regulatory body”.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in § 3 hereof and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Documents and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Documents under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Documents), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Documents shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or re-

ceiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Documents and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and

not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a rate of 6% per annum, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 48% effective Federal tax rate and the highest effective state and local income tax and/or excess profit tax rates generally applicable to the Lessor, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting from any such Federal tax 48% of the amount of any such state and local tax (such rates as so calculated being hereinafter in this Agreement called the Assumed Rates) shall be equal to the following:

(A) an amount equal to any portion of the 7% investment credit with respect to the Purchase Price of the Units as provided in Section 38 and related Sections of the Internal Revenue Code of 1954, as amended (hereinafter called the Investment Credit), lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of the Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default; plus

(B) such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at

the Assumed Rates) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if the Lessor had been entitled to take a deduction (hereinafter called the Class Life Deduction) in respect of the depreciation of each Unit over a 12-year life to a net value equal to 0% of the Purchase Price under regulations to be prescribed by the Secretary of the Treasury or his delegate under Section 167(m) of the Internal Revenue Code of 1954, as amended, which Class Life Deduction was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the failure of said Secretary to permit a Class Life Deduction to the extent described above or as the result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. *Return of Units Upon Default.* § 11 of the Model Lease Provisions is herein incorporated as § 11 hereof.

§ 12. *Assignment; Possession and Use.* § 12 of the Model Lease Provisions is herein incorporated as § 12 hereof.

§ 13. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of the Units then covered by this Lease, for one additional five-year period, commencing on the scheduled expiration of the original term of this Lease, at a rental equal to 35% of the rental for such Units specified for the quarter-annual payments in § 3 (other than the first such quarter-annual payment), in 20 quarter-annual payments on January 15, April 15, July 15 and October 15 in each year, commencing three months after the final quarter-annual rental payment for the original term is due and (b) to purchase all, but not fewer than all, the Units covered by this Lease at the end of the original or any extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the original term of this Lease, in case of an extension thereof, or of the original or the extended term of this Lease, in the case of a purchase of the Units, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* § 14 of the Model Lease Provisions is herein incorporated as § 14 hereof.

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as § 15 hereof.

§ 16. *Recording; Expenses.* § 16 of the Model Lease Provisions is herein incorporated as § 16 hereof, except that the reference in the first sentence of the last paragraph thereof to the "Lessee" shall be deemed to be a reference to the "Lessor".

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits (such deductions, credits and other benefits being in this § 17 called "Benefits") as are provided by the Internal Revenue Code of 1954, as amended from time to time, and the regulations thereunder (hereinafter called the Code) to an owner of property, including (without limitation) the Investment Credit and the Class Life Deduction (as defined in § 10 of this Lease), with respect to the Units. Nothing herein contained shall be construed as an election by the Lessor to treat the Lessee as having acquired the Units for the purposes of the Investment Credit or as a representation or warranty by Lessee of the matters referred to in the preceding sentence.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine

whether it is entitled to the full benefit of the Investment Credit and the Class Life Deduction with respect to the Units.

Lessee represents, warrants and agrees that (i) none of the Units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time of delivery of the Units to the Lessor, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with Lessor; and (iii) at the time of delivery of the Units to the Lessor, and at all times during the term of this Lease, each Unit will constitute property eligible for the Class Life Deduction.

If (A) the Lessor shall lose, or shall not have or shall lose the right to claim, any portion of the Benefits with respect to any Unit as a result of any one or more of the following events or circumstances:

(a) any representation, warranty, fact, estimate, opinion or other statement made or stated by the Lessee (or any officer, employee or agent thereof) contained herein, in the related Finance Agreement or Conditional Sale Agreement or otherwise, made in writing in connection herewith or therewith, shall prove to be fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part; or the Lessee shall take any action in respect of its income tax returns or otherwise which shall be inconsistent with, or in contravention of, any of the transactions contemplated hereby or thereby; or the Lessee (or any officer, employee or agent thereof) shall take any other action whatsoever which shall cause the loss of any portion of the Benefits (provided however, that the Lessee shall not be required by the terms of this Section to indemnify the Lessor for the loss of the investment credit where there has been a Casualty Loss and Lessee has paid in full the Casualty Value under § 7); or

(b) the failure of the Lessee to perform or observe any covenant, condition or agreement to be performed or observed by it under this Lease or said related documents;

or (B) Lessee shall for any reason become entitled to any portion of the Benefits; then Lessee shall pay the Lessor, as supplemental rent, upon written demand made by the Lessor at any time after such Benefit could have been claimed by the Lessor if it were allowable or

by the Lessee if it becomes entitled thereto or, if claimed and then lost, at any time after payment of the tax attributable thereto, the following: in the case of paragraph (A) above, (i) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or of any state or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of any other such taxes), shall be equal to the increased tax paid by the Lessor by reason of such loss plus (ii) the amount of any interest which may be assessed by the United States against the Lessor attributable thereto, plus (iii) in the event the Lessor shall pay the tax claimed and then seek a refund and the final determination of such claim shall be adverse to the Lessor, interest on the amount of the tax paid attributable to the Benefit disallowed by such claim, computed at the rate of 8% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provision of this § 17; and, in the case of (B) above, without duplication of any payment made by Lessee pursuant to (A) above, the amount of any savings in taxes accruing to Lessee by reason of its entitlement to such Benefits.

The rental in § 3 has been computed on the assumption that the lower limit of the asset depreciation range over which the Units may be depreciated for Federal income tax purposes is 12 years; in the event that Lessor shall be permitted to use an asset depreciation period of 11 years, and elects to do so, the figure of 2.14939% in § 3 shall instead be deemed to be 2.13456% as of the commencement of the term of this Lease, and Lessor will refund to Lessee any difference in the two amounts, together with interest at the rate of 4% per annum from the date of each payment to the date of such refund.

If any payment is made by the Lessee under the preceding provisions of this § 17 in respect of any Benefit, but Lessor is entitled to utilization of the Benefit or a comparable tax Benefit in the future by reason of the deferral of the Benefit lost, the Lessor shall pay to the Lessee within thirty days after each receipt by the Lessor of such Benefit or comparable tax Benefit such amount as in the reasonable opinion of the Lessor will reflect the utilization by Lessor of such Benefit or comparable tax Benefit.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States registered mail, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 721 Locust Street, St. Louis, Mo. 63101, Attn.: Mr. Donald Wehrmann, Vice President

(b) if to the Lessee, at 3253 East Trafficway, Springfield, Mo. 65802, Attn.: Mr. H. B. Parker, Vice President

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 21. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of September 1, 1972, for

convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Missouri, *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

MERCANTILE TRUST COMPANY N.A.

By _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

ST. LOUIS-SAN FRANCISCO RAILWAY
COMPANY

By _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.:

On this _____ day of September, 1972, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides at _____; that he is a Vice President of MERCANTILE TRUST COMPANY N.A., the national banking association described in and which executed the above instrument; that he knows the corporate seal of said association; that one of the seals affixed to the said instrument is such association seal; that it was so affixed by authority of the Board of Directors of said association, and that he signed his name thereto by like authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[NOTARIAL SEAL]

Notary Public

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.:

On this _____ day of September, 1972, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a Vice President of ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My Commission Expires _____, 197___.

SCHEDULE A

| Type | Builder's Specifications | Builder's Plant | Quantity | Lessee's Road Numbers (Both Inclusive) | Unit Base Price | Total Base Price | Estimated Time and Place of Delivery |
|------------------------------------|---|-----------------|----------|--|-----------------|------------------|--|
| 100-Ton Open Top Hopper Cars | No. H-3021-1 dated June 28, 1972 | Greenville, Pa. | 200 | SLSF 87400- 87599 inclusive | \$13,975.95 | \$2,795,188 | Mid-Sept.- Oct., 1972 at Greenville, Pa. |

MODEL LEASE PROVISIONS

§ 2. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Document. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Agent, Security Owner" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the

Security Document. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city

income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Document, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Security Document. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Security Document not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 8. *Annual Reports.* On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Lease, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the

Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and Article 10 of the Security Document have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as Vendee, under the provisions of Article 14 of the Security Document. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documents.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable

regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Document) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Document or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 16 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time

while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Security Document in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Document, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from) claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises.

The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Document in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Document; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Document) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will

not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occur-

rence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* On each Closing Date (as defined in the Security Documents), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into the Security Documents and this Lease;

B. the Security Document and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. the Security Document (and the assignment thereof to the Vendor) and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Security Document or this Lease;

E. The entering into and performance of the Security Document or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Security Document and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of

the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.